

ACCESSIBILITY ANALYSIS OF MODEL CODES

INTERNATIONAL BUILDING CODE ANALYSIS

REPORT FOR PUBLIC COMMENT

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I. PURPOSE

The purpose of this report is to identify provisions of the International Building Code (IBC) and proposed Chapters 10, 11, Appendix to Chapter 11, and Section 3407 of the International Building Code 2000 (IBC 2000) mark-up that do not meet the requirements of the Fair Housing Act, the regulations, or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, Steven Winter Associates, Inc. (SWA) recommends how they may be revised to meet the requirements of the Fair Housing Act, the Fair Housing Act regulations, or the Fair Housing Accessibility Guidelines.

Where an IBC Section citation refers to “IBC 2000” in this report, it is for the purpose of reflecting revisions to substance or numbering of the Section that were made from the First Draft of the IBC to the proposed IBC 2000. If the citation does not include a reference to the proposed IBC 2000, it is SWA’s understanding that there is no difference in substance between the IBC and the proposed IBC 2000. However, it should be noted that some chapters of the proposed IBC 2000, notably Chapter 3, were not available for review at the time of this report.

II. METHODOLOGY

The analysis by SWA of the IBC, First Draft, November 1997 and the proposed IBC 2000, which was submitted to the U.S. Department of Housing and Urban Development (the Department) on September 7, 1999, consisted of the following:

- A review of the language of the Fair Housing Act, 42 U.S.C. § 3604 (f)(3)(C) (the Act), the regulations, 24 C.F.R. §§ 100.201 and 205 (the regulations), the “Fair Housing Accessibility Guidelines,” 56 Fed. Reg. at 9472-9515 (March 6, 1991) (the Guidelines), and the “Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,” 59 Fed. Reg. 33362-33368 (June 28, 1994) (the Questions and Answers).
- A review of the December 15, 1997, copyrighted comparative matrix developed by the International Code Council (ICC), Building Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with the Department’s Request for Quotations for this analysis, consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three national model building codes and the IBC. SWA began its analysis of the IBC by reviewing the column of the matrix that includes the IBC’s accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between IBC’s accessibility requirements and those of the Act, regulations, and Guidelines.

- A review of the accessibility provisions of the IBC, First Draft, November 1997, herein referred to as the IBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1 – 1986, which is referenced in the regulations, and ICC/ANSI A117.1 - 1998. (The IBC, First Draft, November 1997, refers to CABO A117.1 – 1998 for the technical provisions for accessibility. In the July 1998, Final Draft, the title of the referenced standard was editorially revised from CABO A117.1 to ICC/ANSI A117.1 – 1998 to reflect the change in the secretariat. Proposed changes to the Final Draft to be included in the IBC 2000 include changing the title of the referenced standard to ICC A117.1 - 1998. This standard is herein referred to as ICC/ANSI A117.1 – 1998.) Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the IBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.
- Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the ICC responds to variances that SWA identified. SWA found it necessary to understand ICC's interpretations of its own requirements that may not be apparent when reviewing code text.
- A review of the August 23, 1999, update prepared by BOCA, International to the December 15, 1997, comparative matrix. The updated matrix compared the Guidelines with the International Building Code, November 1997, First Draft, and the proposed IBC 2000. The matrix includes the final text of any changes to the first draft subject to final approval by ICC.
- A review of the proposed IBC 2000 Chapters 10 and 11, Section 3407, and the Appendix to Chapter 11, sent to SWA. Hereafter, all references to IBC 2000 refer to these chapters only. They were used to cross check sections of the updated matrix that indicated changes to the first draft to be included in the IBC 2000. The updated matrix included “challenges,” or proposed changes to the Final Draft, that were voted on during hearings on September 12-17, 1999. The analysis was completed based on information from ICC that the challenges did not pass.

The original analysis of the IBC was submitted to the Department on September 7, 1999. The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel; and the Office of Housing. A representative of the U.S. Department of Justice also participated in the Working Group. The Working Group conferred with SWA by conference call on September 15, 1999, asking questions and making comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between Department staff and other Code staff. This analysis reflects the results of the Working Group's comments and suggestions and the additional

information from other Code staff. This analysis also has been revised and edited by Department staff. The analysis does, however, represent the findings and conclusions of SWA, the Department's contractor for this project.

III. THE INTERNATIONAL BUILDING CODE

The International Code Council (ICC) is an umbrella organization created in 1994 to assist common code development. The International Building Code (IBC) represents an effort to bring national uniformity to building codes. Drafts of the proposed code were developed by representatives of the three national model code bodies: the Building Officials and Code Administrators International, Inc. (BOCA), the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI).

The IBC includes provisions for accessibility intended to reflect the intent of the Act, regulations and Guidelines. Chapter 11 of the Code, "Accessibility" codifies the accessibility provisions of the Act. Any jurisdiction that adopts the IBC 2000 code must follow these accessibility provisions.

A Working Draft of the IBC was published in May, 1997. This draft was revised to include approved changes and was published as the First Draft, November 1997. The first draft was revised to include approved changes and was published as the Final Draft, July 1998. Hearings on the proposed changes to the Final Draft were held in September, 1999. The IBC 2000 Edition is now scheduled to be published. The IBC 2000 consists of the IBC Final Draft plus all approved 1999 Cycle changes. (ICC has informed SWA that November 1, 1999, is the start of the next code development cycle, called the 2000 Cycle, and will address proposed changes to the 2000 Editions. The 2000 Cycle will end in September of 2000, and approved changes from that cycle, along with approved changes from the subsequent 2001 Cycle and a 2002 Cycles, will be incorporated and will constitute the 2003 Edition of the IBC.)

Unlike the Act, the IBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the IBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as "model codes."

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for accessibility that have been defined in versions of ANSI A117.1 prior to 1998. These dwelling units are referred to in the IBC in Section 1102 as "Type A" dwelling units. ICC/ANSI A117.1-1998 is the first edition of ANSI A117.1 to include technical standards for what is referred to as a "Type B" dwelling unit. Type B dwelling units are defined by Section 1102 of the IBC 2000 as follows: "A dwelling unit designed and constructed for accessibility in

accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law.”

The purpose of the ICC/ANSI A117.1-1998 technical criteria for Type B dwelling units is to incorporate technical provisions to implement the Act, the regulations, and the Guidelines. It is important to note, however, that ICC/ANSI-A117.1-1998 does not contain scoping provisions. The importance of this distinction is discussed below.

IV. SCOPING PROVISIONS

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as “scoping” provisions. This section of the analysis sets forth areas where the scoping provisions of the IBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the IBC included an examination of the following:

- IBC’s definition of dwelling unit, building, structure, and ground floor dwelling unit;
- IBC’s classification of residential buildings according to use and occupancy; and
- IBC’s scoping of dwelling units to which the accessibility provisions apply.

Based on the First Draft of the IBC, those chapters of the proposed IBC 2000 that were available for review, and conversations with representatives of the ICC, this analysis concludes that the proposed IBC 2000 covers most of the same dwelling units, buildings and residential uses as do the Act, the regulations, and Guidelines. For example, SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single-story townhouses and modular units are covered; and additions of four or more dwelling units to existing buildings, are included within the IBC’s scoping requirements for Type B dwelling units.

However, SWA has concluded that the following provisions of the proposed IBC 2000 do not or may not include “covered multifamily dwellings” as they are defined in the Act, the regulations, and Guidelines.

DEFINITION OF “DWELLING UNIT”

The regulations define the term “dwelling unit” as:

a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 C.F.R. § 100.201. It is clear from the discussion in the Preamble to the regulations, 54 Fed. Reg. 3232-3317, (Jan. 23, 1989) (the Preamble), that the Department intended that each sleeping room occupied by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are “covered multifamily dwelling units” for purposes of the Act. 54 Fed. Reg. at 3244.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a “covered multifamily dwelling” under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a “covered multifamily dwelling.” In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a “group home,” would not be considered to be a “covered multifamily dwelling” for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The IBC defines the term “dwelling unit” in Section 310.2, Definitions, as follows: “A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” The IBC does not consider sleeping accommodations intended for occupancy by separate households in a building with shared toileting or kitchen facilities to be dwelling units.

In general, the IBC 2000 (1107.5.4) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R-2 containing four or more dwelling units and in occupancies in Group R-3 where there are four or more dwelling units in a single structure. The list of R-2 occupancies includes non-transient boarding houses and dormitories, as well as fraternity and sorority houses. Dormitories are listed in both the regulations and the Guidelines as being covered under the Act’s accessibility requirements. Subsequent interviews with representatives of ICC have clarified that the IBC does not define a dormitory room whose occupants share kitchen or bathroom space with the other residents of that building as a “dwelling unit.” According to ICC representatives, there is no circumstance in which the IBC considers a separate sleeping room to be “dwelling unit.”

Because sleeping accommodations for separate households in a structure are not covered under the IBC's definition of "dwelling unit," the IBC's scoping provisions do not meet the requirements of the Act, the regulations, or the Guidelines because they do not include all of the dwelling units or residential structures that are covered under the Act, regulations and Guidelines.

Recommendation Number 1:

It is recommended that the proposed IBC 2000 be revised to modify the definition of "dwelling unit," for purposes of the accessibility requirements of IBC 2000 at 1102.1, as follows:

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. For purposes of Chapter 11, sleeping accommodations intended for occupancy by a separate household in structures with shared cooking or toileting facilities shall be considered to be separate dwelling units.

"TRANSIENT HOUSING"

The Department considers length of stay as only one factor in determining whether a building is a "covered multifamily dwelling." In the "Questions and Answers," in response to a question about coverage of continuing care facilities, the Department states:

Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time....Factors that the Department will consider in making such an examination include, but are not limited to: (1) the length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project. 59 Fed. Reg. at 33364.

Homeless shelters are listed in the regulations and the Guidelines as residential uses that may be covered under the Act's new construction accessibility requirements, if the shelter is intended as a residence. 56 Fed. Reg. at 9500; 54 Fed. Reg. at 3244; 24 C.F.R. §100.201. The factors that the Department uses to determine whether a homeless shelter is a "covered multifamily dwelling" are the factors set forth in the Questions and Answers.

In making a determination whether specific boarding houses, "corporate housing," and similar uses are covered under the new construction accessibility requirements of the Act, the Department considers similar factors, such as: 1) whether the rental rate for the unit

will be calculated based on a daily, weekly, monthly or yearly basis; 2) whether the terms and length of occupancy will be established through a lease or other written agreement; 3) what amenities will be included inside the unit, including kitchen facilities; 4) how the purpose of the property will be marketed to the public; and 5) average or projected length of stay. With respect to this latter criterion, the Department has not adopted a “bright line” standard of a specified number of days.

According to Section 310.1 of the IBC, Use Group R-1 structures include the use of a building or structure for sleeping accommodations for occupants who are primarily transient in nature (less than 30 days). The proposed IBC 2000 Appendix to Chapter 11 (referenced here by the letter “A” in the citation) entitled “Supplementary Accessibility Requirements”, defines “transient lodging” as a building, excluding medical care and long term care facilities, that contains one or more dwelling units or sleeping accommodations. Examples of transient lodging include, but are not limited to, resorts, group homes, hotels, motels, dormitories, homeless shelters, halfway houses and social service lodging. (A1102.1) All hotels and motels, for example, are considered R-1 occupancies because they are usually occupied for a period of less than 30 days. Boarding houses and homeless shelters that are occupied for periods of less than 30 days also are considered R-1 occupancies and are not covered under proposed IBC 2000, Section 1107.5.4 Accessible dwelling units. If boarding houses and homeless shelters are intended to be occupied for periods of more than 30 days, then they are considered R-2 occupancies and are covered under proposed IBC 2000, Section 1107.5.4, Accessible dwelling units. (However, as discussed above, if sleeping accommodations in homeless shelters or other uses do not fall under the definition of “dwelling unit,” the proposed IBC 2000 Section 1107.5.4 provisions do not apply.)

The IBC classifies vacation time-shares as “transient in nature” and classifies them as R-1 occupancies. As a result, vacation time-shares are not required to be accessible according to the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units. But see 54 Fed. Reg. at 3238; 56 Fed. Reg. at 8481.

The scoping provisions of the IBC with respect to “transient” residential uses as defined in the R-1 and R-2 classifications do not meet the requirements of the Act, regulations or the Guidelines, because the definition of transient housing as housing occupied for less than thirty days may exclude from coverage some residential buildings that are covered by the regulations and the Guidelines, when there are four or more dwelling units in the building.

Recommendation Number 2:

It is recommended that the proposed IBC 2000 be revised to delete the definition of “transient” at A1102.1 and change its listing of the residential use classifications as follows:

- **R-1 Residential occupancies where the occupants are primarily transient in nature**

Hotels (transient)

Motels (transient)

Boarding houses (transient)

- **R-2 Residential occupancies containing more than two dwelling units where the occupants are primarily permanent in nature, including:**

Apartment houses

Boarding houses (not transient)

Dormitories

Fraternities and sororities

Monasteries

Convents

Vacation timeshare properties

Hotels (not transient)

Motels (not transient)

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES

The Act defines a “dwelling” as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families....” 42 U.S.C. § 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

As mentioned in the discussion of transient residential uses above, the Questions and Answers addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a “dwelling” under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings.
59 Fed. Reg. at 33364.

According to the IBC, most of these types of facilities, referred to by the IBC as Residential Care/Assisted Living facilities, are classified as R-4, I-1, or I-2 occupancies and are not required to comply with the proposed IBC 2000, Section 1107.5.4, Accessible dwelling units. According to the IBC, Section 310.2, Definitions, the term “Residential Care/Assisted Living Facilities” is defined as follows:

A building or part thereof housing a maximum of sixteen (16) or less persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. The classification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities. Residential Care/Assisted Living Facilities housing more than sixteen (16) persons shall be classified as a Group I-1.

If a Residential Care/Assisted Living Facility has between 6 and 16 occupants, it is classified as R-4, and not covered under the proposed IBC 2000 1107.5.4. In group R-4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. (IBC 2000 Section 1107.5.7.) The fact that a facility covered under R-4, or I-1 below, such as a group home, may be considered to be a “single family” residence for zoning and land use and other purposes of the Act does not preclude its inclusion in the R-4 or I-1 classification of the IBC. Additionally, a group home or assisted living facility receiving federal financial assistance may be required under the applicable HUD program regulations to comply with the design and construction requirements of the Act, as well as the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and, where appropriate, the accessibility requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq.

The only instance where a Residential Care/Assisted Living Facility is required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, is if the facility has five or less occupants, regardless of whether the occupants are capable of self preservation. Sections 308.2; 308.3. In that case, they are classified as R-3 occupancies, which are required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, if they have four or more dwelling units as defined by the IBC.

If the same facility has more than 16 occupants who are mostly capable of responding to an emergency situation without physical assistance from staff, it is classified as I-1. Section 308.2, Group I-1, is defined by the IBC as follows:

This occupancy shall include a building or part thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment but which provides personal

care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: residential board and care facilities, assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities.

In occupancies classified as I-1, at least 4% of the sleeping rooms and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.1)

If the occupants of a facility with more than five occupants are not capable of responding to an emergency situation without physical assistance from staff, the facility is classified as I-2. Section 308.3, Group I-2, is defined by the IBC as follows:

This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I-2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less persons shall be classified as a residential occupancy.

For nursing homes in Group I-2, at least 50% of the patient facilities and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.2).

The scoping provisions of the IBC with respect to “Residential Care/Assisted Living” facilities do not meet the requirements of the Act, the regulations, or the Guidelines, because the classification of these facilities as R-4, I-1, or I-2 may exclude from coverage dwelling units within those facilities that would be covered by the Act, the regulations and the Guidelines.

Recommendation Number 3:

It is recommended that the definition of “dwelling unit” contained in Recommendation Number 1 be adopted and that the proposed IBC 2000 be revised as follows:

Modify the language of the charging paragraph of the proposed IBC 2000 1107.5.4 Accessible dwelling units to include the following:

In occupancies in Group R-2 and R-3, as applicable in Section 101.2, where there are four or more dwelling units in a single structure, every dwelling unit shall be a Type B dwelling unit. In occupancies in Group R-4 where there are four or more dwelling units in a single structure, at least one shall be Type A, and all other dwelling units shall be Type B dwelling units. In

occupancies in Group I-1 where there are four or more dwelling units in a single structure, at least 4 percent, but not less than one, of the dwelling units shall be Type A, and all other dwelling units shall be Type B. In nursing homes of Group I-2, where there are four or more dwelling units in a single structure, at least 50 percent, but not less than one, of the dwelling units shall be Type A dwelling units, and all of the other dwelling units shall be Type B.

GROUND FLOOR

The regulations define “ground floor” as a “floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.” 24 C.F.R. § 100.202. The Guidelines further state: “Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.” 56 Fed. Reg. at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers about the Guidelines question number 6. 59 Fed. Reg. at 33364.

The IBC defines a Dwelling Unit, Ground Floor as: “A dwelling unit with a primary entrance and habitable space at grade.” (1102.1)

IBC 2000 Exception 1, Section 1107.5.4, Accessible dwelling units, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor. The IBC’s definition of “dwelling unit, ground floor” does not specifically provide that a building can have more than one ground floor. For example, if a building is built into a hill, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. It is not completely clear under the proposed IBC 2000 whether there can be more than one ground floor or ground floor units on different levels of a building.

Recommendation Number 4:

It is therefore recommended that the proposed IBC 2000 define the term “ground floor” for purposes of Chapter 11 to match the regulations and the Guidelines and delete the definition of “dwelling unit, ground floor” from Section 1102 as follows:

Ground floor: A floor of a structure with an entrance on an accessible route. A structure may have one or more ground floors. Where the first floor

containing dwelling units in a structure is above grade, all units on that floor must be served by an entrance on an accessible route. This floor will be considered to be a ground floor.

In addition, it is recommended that Exception 1, Section 1107.5.4 be modified as follows:

Where no elevator service is provided in a structure, Type A and Type B dwelling units need not be provided on floors that are not ground floor(s).

DEFINITION OF BUILDING AND STRUCTURE

In the definition of “covered multifamily dwellings,” the Guidelines contain the statement that: “Dwelling units within a single structure separated by firewalls do not constitute separate buildings.” 56 Fed. Reg. at 9500. The Guidelines’ definition of “building” is a “structure, facility, or portion thereof that contains or serves one or more dwelling units.” 56 Fed. Reg. at 9500.

The IBC in Chapter 2 defines “building” as : “Any structure used or intended for supporting or sheltering any use or occupancy.” A “structure” is defined as: “That which is built or constructed.” Chapter 11, Section 1107.5.4 applies the requirements for Type B dwelling units to occupancies in Group R-2 and R-3 where there are four or more dwelling units in a single *structure*. According to ICC staff, a structure may be made up of any number of buildings or other parts, including buildings having firewall separations, but it is still a structure regardless of the components making up the structure. Therefore, for purposes of accessibility, IBC treats dwelling units in buildings separated by firewalls as a single structure. However, this interpretation may not be sufficiently clear.

Recommendation Number 5:

To ensure that firewall criteria are eliminated for the purpose of scoping the accessibility requirements for Type B dwelling units, it is recommended that the proposed IBC 2000 Exceptions in Section 1107.5.4 be modified by eliminating any reference to the term “building” and replacing it with the term “structure.”

BUILDINGS CONNECTED BY BREEZEWAYS OR STAIRWAYS

The regulations define a building as “a structure, facility or portion thereof that contains or serves one or more dwelling units.” 24 C.F.R. § 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under the IBC, two structures that are connected by a breezeway or stairway and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the IBC's accessibility provisions.

It appears, however, that in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not this design is considered one building must be determined under the IBC on a case-by-case basis. In addition, in some cases, the IBC considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. As a result, the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 6:

It is recommended that the proposed IBC 2000 be modified to include a revision to Section 3104.2, Separate structures, as follows:

3104.2. Separate structures. Connected buildings shall be considered to be separate structures. For purposes of accessibility as required by Chapter 11, buildings or structures structurally connected to other buildings or structures by pedestrian walkways, breezeways, or stairways shall be considered one structure.

MULTISTORY DWELLING UNITS

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a "covered multifamily dwelling" because the entire unit is not on the ground floor. 54 Fed. Reg. at 3244. The Guidelines define a "multistory dwelling unit" as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 Fed. Reg. at 9500. A "single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor. 56 Fed. Reg. at 9501.

The IBC includes the following definitions:

"Dwelling Unit, multistory" means a dwelling unit with habitable or bathroom space located on more than one story. IBC 1102.1. The IBC defines "habitable space" as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. The IBC does not define the term "single-story dwelling unit." IBC 202.8.

According to the IBC's definition of "dwelling unit, multistory", a unit would be considered multistory if one level contains living or "habitable" space and the floor next

above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. 56 Fed. Reg. at 9500-01. The IBC's definition of "dwelling unit, multistory" does not meet the Department's interpretation of what constitutes a "multistory dwelling unit" under the Act, the regulations and the Guidelines.

Recommendation Number 7:

It is recommended that the reference to "or bathroom space" in the IBC's definition of "multistory dwelling unit" be deleted as follows:

- **Section 1102, Definitions:**
Dwelling unit, multistory: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

V. SEVEN SPECIFIC DESIGN AND CONSTRUCTION REQUIREMENTS

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1-1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer versions of the ANSI-A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that Code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or State or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The proposed IBC 2000 utilizes the technical criteria contained in ICC/ANSI A117.1-1998. Therefore, SWA has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on ICC/ANSI A117.1-1998, even where those criteria differ from the ANSI A117.1-1986 criteria or the Guidelines.

REQUIREMENT 1: ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE

The Guidelines set forth specifications to implement the requirements of 24 C.F.R. § 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 Fed. Reg. at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics; however, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 Fed. Reg. at 9504.

In conducting this analysis, SWA and the Department noted that the IBC apparently applies the site impracticality test to both Type A and Type B dwelling units. The inclusion of Type A units in the scoping of application of the site impracticality test may conflict with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a), in multifamily residential projects receiving federal financial assistance, or with the requirements of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq., in multifamily residential projects constructed by governmental entities.

The IBC's provisions relating to the requirement of an accessible building entrance on an accessible route are consistent with the Act, the regulations, and the Guidelines except as follows:

SITE IMPRACTICALITY DUE TO TERRAIN

The Guidelines set forth two tests to assess site impracticality due to terrain-- the individual building test and the site analysis test. 56 Fed. Reg. at 9503.

Individual Building Test -- This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 Fed. Reg. 9503.

Site Analysis Test --May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 Fed. Reg. at 9503-04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed

engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 Fed. Reg. at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 Fed. Reg. at 9504.

Step C requires that in addition, **all** ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 Fed. Reg. at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to Step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test

Section 1107.5.4, Exception 4, of the proposed IBC 2000 provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be "less than 10%". In addition, the Exception fails to provide equivalent language to Step C -- i.e., it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 Fed. Reg. at 9504. Therefore, the IBC does not meet this aspect of the Guidelines.

Moreover, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 Fed. Reg. at 9504. The IBC does not include any language that reflects these requirements. As a result, the IBC does not meet these provisions of the Guidelines.

Recommendation Number 8:

In order to address these inconsistencies, we recommend the following additions to the proposed IBC Section 1107.5.4, Exception 4:

The number of Type B dwelling units provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10%. In addition to the percentage established, all ground floor units in a structure, or ground floor units served by a particular entrance, shall be Type B if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In no case shall the number of Type B dwelling units be less than 20 percent of the ground floor dwelling units on the entire site. When a structure is equipped with an elevator which provides access to the ground floor only, or when an elevated walkway is planned between an entrance and a pedestrian or vehicular arrival point and the planned walkway has a slope no greater than 10%, all ground floor units shall comply with the requirements for Type B dwelling units. The walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings with Elevators

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 Fed. Reg. at 9503. The IBC 2000 does not reflect this requirement in Section 1107.5.4, Exception 5.

Recommendation Number 9:

It is recommended that Exception 5, Section 1107.5.4 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings are required to be at or above the base floor elevation resulting in ...

Variance Related to Sites with Unusual Characteristics

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and ALL vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 Fed. Reg. at 9504.

The IBC's corresponding provision at Section 1107.5.4, Exception 5, states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent. The IBC omits the reference to ALL vehicular and pedestrian arrival points that are within 50 feet, whereas the Department noted that the other model building codes included it, therefore, to ensure consistency with the Guidelines, the Department recommends that the word "all" be included.

Recommendation Number 10:

It is recommended that Section 1107.5.4, Exception 5, paragraph 5.1, be revised as follows:

5.1. A difference in elevation between the minimum required floor elevation at the primary entrances and ALL vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND

REQUIREMENT 2: ACCESSIBLE AND USABLE PUBLIC AND COMMON USE AREAS

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to, and usable by, people with disabilities. 42 U.S.C. § 3604 (f)(3)(C)(i); 24 C.F.R. §100.205 (c) (1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1 – 1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the

specifications including modifications to the referenced Standard. 56 Fed. Reg. at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

- Accessible routes
- Protruding objects
- Ground and floor surface treatments
- Parking and passenger loading zones
- Curb ramps
- Ramps
- Stairs
- Elevators
- Platform lifts
- Drinking fountains and water coolers
- Toilet rooms and bathing facilities
- Seating, tables, or work surfaces
- Places of assembly
- Common-use spaces and facilities
- Laundry rooms

56 Fed. Reg. at 9505. When a variance is identified in the IBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

ACCESSIBLE ROUTE(S)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 Fed. Reg. at 9504.

Vehicular Route

IBC 2000 Section 1107.5.5 contains language that is comparable to the Guidelines with one exception. That section states:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The IBC does not include language making it clear that accessible parking and curb ramps must be available at each public or common use facility if access is provided by a vehicular route.

Recommendation Number 11:

It is recommended that the proposed IBC 2000 1107.5.5, Accessible route, be modified to include the following language:

- **If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking spaces and curb ramps at each public or common use facility or building is permitted in place of the accessible route.**

Headroom

The Guidelines refer to headroom requirements through their adoption of the ANSI A117.1-1986 section on Accessible Routes and its subsection, 4.3.5., which references headroom requirements. 56 Fed. Reg. at 9505. The IBC does not include headroom requirements in its technical provisions for accessible routes. However, it does include headroom requirements in the provisions for protruding objects.

Recommendation Number 12:

It is recommended that the proposed IBC 2000 section 1107.5.5, Accessible Route, add a reference to the headroom requirements described in the proposed IBC 2000 Section 1003.5, Protruding objects.

Stairs

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 Fed. Reg. at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the proposed IBC 2000, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the proposed IBC 2000 and the Guidelines' requirements for stairs located along accessible routes not connected by an elevator.

Recommendation Number 13:

It is recommended that the IBC include a provision for stairways under Section 1108, Other Features and Facilities as follows:

Stairways

Stairways in structures, or portions of structures, located along accessible routes not connected by an elevator shall be designed and constructed to comply with ICC/ANSI A117.1 - 1998.

PARKING AND PASSENGER LOADING ZONES

The Questions and Answers (Question and Answer 14c) states that at least 2% of parking garages where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14'2" wide and have a vehicular door at least 10' wide. 59 Fed. Reg. at 33366.

The IBC does not provide minimum requirements for these garages, and therefore, does not meet this aspect of the provisions of the Guidelines.

The Guidelines provide that accessible parking on a route accessible to persons in wheelchairs be provided for at least 2% of the covered dwelling units, and that there be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. 56 Fed. Reg. at 9505.

In addition, the Questions and Answers provide that parking shall be provided on the same terms and with the full range of choices (e.g., surface parking or garage) that is provided for other residents. 59 Fed. Reg. at 33366.

The IBC does not include comparable language in Section 1106, Parking and Passenger Loading Facilities, and therefore, this aspect of the IBC does not meet the provisions of the Guidelines.

Recommendation Number 14:

In order to address these two inconsistencies, it is recommended that the proposed IBC 2000 add the following language to Section 1106.2, Group R-2 and R-3.

Where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, at least 2% of parking garages provided for R-2 and R-3

occupancies required to have accessible dwelling units must be at least 14'2" wide and have a vehicular door at least 10' wide ...

... Where accessible parking spaces are provided, they shall be on the same terms and with the full range of choices (surface parking, carports, or garage) that are provided for other residents.

Accessible visitor parking sufficient to provide access to grade level entrances for Type A and Type B dwelling units and accessible parking at facilities serving accessible structures shall be provided.

REQUIREMENT 3: USABLE DOORS

The Act and the regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 C.F.R. § 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. 56 Fed. Reg. at 9506. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 Fed. Reg. at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

56 Fed. Reg. at 9506. The Department has determined that the IBC meets the requirements of the Act, the regulations, and the Guidelines for usable doors.

REQUIREMENT 4: ACCESSIBLE ROUTE INTO AND THROUGH THE COVERED DWELLING UNIT

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 C.F.R. § 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 Fed. Reg. at 9509-10. The proposed IBC 2000 meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 4, except the following:

MULTISTORY UNITS SERVED BY ELEVATORS

Among the criteria for Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 Fed. Reg. at 9507.

The IBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the IBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 15:

It is recommended that the IBC modify Section 1107.5.4, Exception 3 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided.

REQUIREMENT 5: LIGHT SWITCHES, ELECTRICAL OUTLETS, THERMOSTATS, AND OTHER ENVIRONMENTAL CONTROLS IN ACCESSIBLE LOCATIONS.

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C) (iii)(II); 24 C.F.R. § 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 Fed. Reg. at 9507. The IBC meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 5.

REQUIREMENT 6: REINFORCED WALLS FOR GRAB BARS.

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 C.F.R. § 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 Fed. Reg. at 9509-10. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and the Guidelines.

REQUIREMENT 7: USABLE KITCHENS AND BATHROOMS.

The Act and the regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 C.F.R. § 100.205(c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 Fed. Reg. at 9511-15. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and Guidelines.